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ABSTRACT
OF THE
LAWS
OF THE
DISTRICT OF COLUMBIA.

BY
M. THOMPSON.

OF THE WASHINGTON BAR.

THIRD EDITION.

Abstracts of the laws and regulations of the District of Columbia—Law Office.
The abstracts of laws and regulations of the District of Columbia are published in this volume.

WASHINGTON CITY, D. C.:
H. M. MORRISON & CO.
1855.

ERRATA.

On page 3, for ; “ after the expiration of ten days from the adjournment of the term,” read ; “after the expiration of ten days from the rendition of the judgment.”

Near the top of page 4, for ; “six months from the rendition of the judgment,” read ; for six months from the date of the supersedeas.”

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Misera est servitus, ubi jus est aut vagum aut incognitum.—Law Maxim.
“The servitude is there miserable, where the Law is either vague or unknown.”

WASHINGTON CITY, D. C.:
W. M. MORRISON & Co.,
1855.

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Entered according to Act of Congress, in the year 1855, by
WILLIAM M. MORRISON & CO.,
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1855

STEREOTYPED AND PRINTED BY J. HARDING, 57 SOUTH THIRD STREET, PHILADELPHIA.

PUBLISHERS' PREFACE.

Some months since, the learned author of the following work was induced to prepare for publication, an "Abstract of the Collection and other Laws (of most general interest) of the District of Columbia," the first edition of which being soon exhausted, a second soon afterwards appeared, which, being also soon exhausted, and a very general desire being expressed for a third and more enlarged edition of the work, the author has been prevailed upon to furnish it.

The work having thus rapidly passed to a third edition, and received the unqualified approbation of the press and public, further comment in this place, or commendation of its value and importance to every member of the community, is wholly unnecessary.

W. M. MORRISON & CO.

WASHINGTON CITY, D. C., 1855.

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ABSTRACT
OF THE
LAWS
OF THE
DISTRICT OF COLUMBIA.

General Observations on the Judicial Organization of the District.

The laws of Maryland, which were of force on the 27th of February, 1801, with the few exceptions in which they have been repealed, altered, or modified by acts of Congress, prevail in the District of Columbia, together with such laws as have been enacted by Congress before and since that time.

The laws regulating rights have not been materially changed; but the organization of the Courts is, of course, wholly distinct.

The judicial power is vested in a Circuit Court, consisting of a Chief Judge, and two Assistant Judges; one Criminal Court, consisting of one Judge, vested with exclusively criminal jurisdiction; one Orphans' Court, consisting of one Judge; and Justices of the Peace.

The Judges of the Circuit Court have all the powers vested by law in the Circuit Courts of the United States, and the Judges thereof. In some respects, even, it has been held that the power of the Circuit Court of the District of Columbia is more extensive than that of the Circuit Court of the United States in the several States, to whom the entire judicial power of the United States under the Constitution, has not been committed. (Kendall, P. M. General, vs. the United States. 12 Peters, 524.)

From the judgment of this Court there lies an appeal, in cases where the matter in dispute is of the value of one thousand dollars and upwards, to the Supreme Court of the United States.

Of Imprisonment for Debt.

No person can be held to bail in any civil suit, nor imprisoned for any debt, except corporation fines, and then not exceeding ninety days for any one offence. (Act of Congress, Feb. 2, 1853.)

Of False Pretences.

Every person duly convicted of obtaining by false pretences, any goods or chattels, money, bank note, promissory note, or any other instrument in writing, for the payment or delivery of money, or other valuable things, shall be sentenced to suffer imprisonment and labor in the penitentiary, for a period not less than one, nor more than five years. (Act of Congress, March 2, 1831. Stat. at Large, vol. 4, 449.) This act re-enacts the act of 30, Geo. 2, c. 24, respecting false pretences, by which any designed misrepresentation of the defendant's means, by which he obtains money or goods of another, is within the statute. Any and every false assertion, or pretence whatsoever, by means of which the party fraudulently obtains the goods or money, &c., is a false pretence within the statute. (5 Cranch, C't C't R. 647.)

Times of Holding Courts.

The Supreme Court of the United States meets in the Capitol, in December, in every year.

The Circuit Court sits semi-annually, on the 4th Monday in March, and 8d Monday in October.

Suit may be instituted at any time; process being returnable at the commencement of the next succeeding term.

The Criminal Court meets the first Monday in March, third Monday in June, and first Monday in December.

The Orphan's Court meets on Tuesdays and Saturdays of every week.

Justices of the Peace sit in their respective offices every day except Sundays.

Commencement of Suit—Judgment—Execution—Supersedeas.

The first term after institution of suit, is the appearance term; the next (six months thereafter) the imparlance term; at which latter, judgment is entered up by default, upon all liquidated demands (such as notes, bonds, &c., not requiring the inquisition of a jury to ascertain the amount due;) in case there is no appearance by attorney for the defendant; but if there be an appearance by attorney, then the case is continued to the next term, (six months thereafter,) when the case is regularly triable, and can only be continued by mutual consent, or adequate cause shown.

After the expiration of ten days from the adjournment of the term at which judgment is obtained, and within a year and a day after the rendition of the judgment, execution may issue, and if returned *nulla bona*, is renewable every year from the rendition of the judgment. (3 Cranch C't C't R. 323.)

The judgment and execution may be superseded, or stayed at any time within sixty days after its rendition, by the defendant giving good and approved security for the debt and costs, payable at the end of six months after such supersedeas. If execution has not issued within a year and a day from the rendition of the judgment, it (judgment) may be revived by *sci. fa.*

Of Justices of the Peace—their Jurisdiction, Powers, &c.

Justices of the Peace have summary jurisdiction in cases of debt, account and contract, express or implied, where the amount or value in controversy, including damages, does not exceed fifty dollars, exclusive of costs; but they can take no cognizance of any action of tort, or trespass, upon any person or property, or any action sounding in damages merely. A justices' judgment constitutes no lien upon real estate. Where the debt or demand exceeds twenty dollars, either party may demand a trial by jury, and from such trial by jury there is no appeal. Either party may appeal to the Circuit Court from the Justices' judgment, in case the same be for more than five dollars, exclusive of costs, except as before stated, in case of jury trial.

The defendant may stay or supersede execution at any time within sixty days after the rendition of the judgment,

by giving approved surety for the debt and costs, payable at the end of six months from the rendition of the judgment. No appeal lies after the judgment has been superseded. Justices have jurisdiction against executors and administrators, where the amount in controversy does not exceed fifty dollars, exclusive of costs. A note or debt of fifty dollars upon which the smallest particle of interest is due, cannot be recovered before a Justice. (Act of Congress, 1823, 3 Stat. at Large, 743. 2 Cranch, C't C't R. 629. 5 Cranch, c. c. R. 509.)

A plaintiff may relinquish interest upon an open account, and bring his action for the principal sum only before a Justice, if the principal does not exceed the sum of fifty dollars, although, with interest, the debt would exceed that sum. (5 Cranch, C't C't R. 505.)

Of Attachment.

If the debtor, whether a resident or non-resident, so abscond, or secrete himself, that the ordinary process of law cannot be served upon him, the creditor, whether resident or non-resident, or some person for him, may make oath of the amount due, and obtain an attachment against the lands, tenements, goods, chattels and credits of the defendant; but "corn for necessary maintenance, bedding, gun, axe, pot, and laborer's necessary tools, and such like household implements, and ammunition for subsistence," are exempt from attachment. And if the defendant should not appear in person, or by attorney, within a year and a day from the awarding of the attachment, the lands, goods, chattels, &c., attached, shall be condemned and sold. The plaintiff must prove his debt before condemnation. A mere equitable interest in lands is not liable to attachment. (Act of Maryland, 1715, c. 40. Act of Maryland, 1795, c. 56. 3 Cranch, C't C't R. 381.)

Quere.—Whether equitable interests, other than those in lands, are liable to attachment? We incline to the negative of the proposition.

Effect of Judgment and Execution upon Property.

A judgment constitutes a lien upon real estate, from the moment of its rendition, but does not bind personal property until execution is issued and lodged in the hands of the Marshal.

What may be Taken in Execution and what not.

Whatever may be assigned and granted, may be taken in execution. Nothing can be taken in execution that cannot be sold. Bank notes cannot be taken in execution, because they are of the nature of choses in action. (Ca. Temp. Hard. 53.) Money may be taken in execution, if in the possession of the defendant, but cannot be taken from his person. (1 Cranch, 117.) Goods pawned shall not be taken in execution, for the debt of him who pawned them, during the time they are pawned. (Com. Dig. title Ex. c. 4.) Mere equitable interests are not liable to execution.

Of Property Exempt from Execution.

Corn for necessary maintenance; gun, axe, pot, beds, bedding not exceeding one bed, and the bedding thereof, for every two persons belonging to the family; wearing apparel; one cow, together with the tools and implements of defendant's trade, are exempt from execution, and for rent. (Act of Maryland, 1715, c. 40. Act of Congress, March 1, 1823, 3 Stat. at Large, 746.) There is no homestead exemption.

Of the Limitation of Actions.

All actions of account upon simple contract, notes and instruments not under seal, detinue and replevin, trespass, and trespass *quare clausum fregit*, must be commenced within three years after the accruing of such cause of action; and actions on the case for words, actions of trespass for assault, wounding and imprisonment, within one year from the time the cause of such actions accrued; and any person entitled to any of such actions, who shall at the time of the cause of any such action accruing, be within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond the limits of the District of Columbia, such person may bring such action within three years after the removal of such impediment, or coming to full age, sound memory, at large, release from coverture, or returned, or arrived within the limits of said District.

No bill, bond, judgment, recognizance, or other specialty, or sealed instrument, is good, pleadable, or admissible in evidence of any debt, claim, or demand, after the principal debtor and creditor have been dead twelve years, or the debt.

or thing in action above twelve years' standing; saving to all persons under the impediments of infancy, coverture, insanity, imprisonment, or being beyond the limits of the District, the full benefit of all such bills, bonds, judgments, etc., &c., for the space of five years after the removal of such impediments. (Act of Maryland, 1715, c. 23. 1 Cranch, C't C't R. 475, 2 Cranch C't C't R. 112.)

But a judgment may be revived by *scire facias*, at any time within twelve years after the rendition, and such *scire facias* may be renewed from time to time, and the judgment thereby kept in full force as long as the plaintiff, his heirs, executors, administrators, or assigns, may desire. (5 Cranch, C't C't R. 1.)

Actions of ejectment for the recovery of real property, must be brought within twenty years after the cause of action accrued, unless the party is under some of the legal disabilities above mentioned; and then in ten years after such legal disability is removed.

Of Insolvency.

There is, practically, no insolvent law, or act of insolvency of force, except in regard to corporation fines.

Orphans' Court—Its Powers, Jurisdiction, &c.

This Court is empowered to bind out as apprentices, orphan children, the profits of whose estates are not sufficient for their maintenance, children suffering through the extreme indigence of their parents, the children of beggars, illegitimate children, and the children of persons out of the District, where a sufficient maintenance is not afforded. (Act of Maryland, 1793, c. 45.)

This Court has jurisdiction for the probate of wills, granting letters testamentary and of administration, directing the conduct and settling the accounts of executors and administrators, securing the rights of legatees and orphans, superintending the distribution of the estates of intestates, and administering justice in all matters relative to the affairs of deceased persons, according to law.

This Court is empowered to appoint guardians, and to examine, hear and decree upon all accounts, claims and demands between wards and their guardians, and between legatees, or persons entitled to a distributive part of an intestate's estate, and executors and administrators. (Act of

Maryland, 1798, No. 101, c. 15.) An appeal lies from this Court to the Circuit Court of this District.

Of the Rights of Married Women.

The rights of married women remain as at common law. During marriage the being, or legal existence of the woman is suspended; or at least incorporated and consolidated into that of the husband. (1 Black. Com., 442.)

She cannot acquire, hold, or enjoy property in her sole or exclusive right or name, but may by the intervention of a trustee.

The wife is dowable, i. e., entitled to one third of all the lands and tenements in fee simple, fee tail general, or as heir in special tail, of which her deceased husband was seized, either in deed, or in law, even for an instant at any time during the coverture. (7 Greenl. 383.)

And the widow shall be endowed of real estate of which the husband was beneficially seized for his own use, though for an instant of time only. But the widow is not entitled to dower in any lands to which her husband had only an equitable title. (2 Cranch, C't C't R. 673.)

Of Interest and Usury.

All notes, bonds, contracts, &c., for more than six per cent. interest, are void; and every person charging, or taking, directly or indirectly, more than six per cent interest, shall forfeit treble the amount so lent or contracted; one half to go to the United States, and the other half to any person who shall sue for it. (Act of Maryland, Sept., 1704, c. 69.)

The validity of the contract, or claim, in regard to interest, or usury, is to be decided by the law of the place where the contract is made. If valid there, it is valid every where; and vice versa, if void or illegal there, it is void every where. (Story, Conf. of Laws, 242.)

A note payable in specified bank notes, with ten, twenty, or any amount of interest, is not usurious, although there is no evidence that the bank notes are worth less than their nominal value. (Stevenson vs. Unkefer, 14 Ill. R. 103, 4 Wend. 679.)

The owner of a note not originally tainted with usury, may sell it at as great a discount as he pleases, without making the transaction usurious. (7 Wend. 569.)

Merchandize on Commission.

Any person or persons who shall sell, or offer to sell, any goods, wares, merchandize, or other articles of foreign or domestic growth, production or manufacture, on commission, or by samples, or to order the same for other persons, or to receive the same on consignment, as agent, factor, broker, or otherwise, must first obtain a license from the corporation, for which a tax of forty dollars per annum must be paid, such license being transferable upon the books of the corporation. (Cor. Laws, 70, 71.)

The tax upon a licence to any person or persons, not a citizen and actual resident of the city of Washington, authorizing him, her, or them, to sell goods, wares, merchandize, &c., &c., for one year, is one hundred and fifty dollars; for six months, one hundred dollars; and for three months seventy-five dollars; and no license shall be issued for a less period than three months, and such licence shall not be transferable. (Cor. Laws, 77.)

Taxes—Tax Sales—Tax Titles, &c.

Real property, upon which one or more years' taxes are due and unpaid, may be sold at public auction, to satisfy said taxes, &c., after public notice of the time and place of such sale, by advertising once a week in some newspaper printed in the city of Washington, for at least twelve successive weeks.

But the proprietor of any real estate so sold, his, her, or their heirs, agents, or legal representatives, may at any time within two years after such sale, redeem such property, upon payment or tender to the purchaser thereof, the amount of the purchase money paid by him, and ten per centum per annum as interest thereon. And it is further provided, that minors, mortgagees, or others having equitable interests in real property, sold for taxes, shall be allowed one year after such minors coming to, or being of full age, or after such mortgagees, and others having equitable interests, obtaining possession of, or a decree for the sale of such property, to redeem the property from the purchaser, or purchasers, his, her, or their assigns, on paying the amount of the purchase money paid therefor, with ten per cent. interest thereon, and all the taxes that have been paid thereon by the purchaser, or his assigns, with ten per cent. interest on the amount

of such taxes; and also the full value of the improvements which may have been made on such property, by the purchaser, or his assigns. (Act of Cong. approved May 15, 1820. Act of Cong. May 24, 1824. Act of Cong. May 17, 1848.)

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Of Patents.

If the unsuccessful applicant for a patent, instead of withdrawing, chooses to persist in his claim, he must make his oath or affirmation anew. (Act of 1836, Sec. 7.) After which, he may appeal to the Chief Justice, or to either of the Associate Judges of the Circuit Court of this District. (Acts of 1836, Sec. 7; 1839, Sec. 11; 1852, Sec. 1.)

Notice of appeal, the reason of appeal and petition, must all be in accordance with the appellate Judges' rules.

Gambling.

Every person duly convicted of keeping a faro bank or gaming table, shall be sentenced to suffer imprisonment and labor for a period not less than one year, nor more than five years. Act of Congress, March 2, 1831.

Sole Trader.

There is no statute in the District of Columbia, authorizing a married woman to become sole trader, and no such right exists at common law. 2 Serg. & Rawle, R. 289.

Divorce.

There is no law authorizing divorces in this district; the power to grant them is exclusively vested in Congress, but has never yet been exercised by that body.

Lottery Tickets.

Every person who shall be duly convicted of keeping, within the District of Columbia, any office or place of business for the sale of lottery tickets, or of any share or interest in lottery tickets, or sell, or offer for sale within said district, any lottery ticket, or any share or interest in any lottery ticket, shall be punished by imprisonment in the

common jail of said district, for a period not less than one, nor more than six calendar months, and forfeit and pay a fine of not less than one hundred, nor exceeding one thousand dollars, one half of which shall go to the informer, and the other half to the municipal corporation within whose limits the offence shall have been committed; but if committed without the limits of any municipal corporation, then such moiety of the fine shall go to the United States.

The contract of sale for such lottery ticket, or tickets, or share or interest in such lottery ticket or tickets, shall be absolutely void, and the person or persons paying therefor, shall have a right to recover back the money paid therefor, as money paid upon a void consideration. Act of Congress, Stat. at Large, vol. 5. 578.

Insurance Agencies.

Any fire, marine, life, or other insurance company, established or located beyond the limits of the corporation of Washington City, to establish any agency in said city, or for any person to act as agent for any such insurance company in said city, such insurance company or agent shall first pay a tax of forty dollars per annum, and obtain a license from said corporation, such license being transferable upon the books of the corporation; and every person who shall act as agent for any such insurance company, or aid in effecting any insurance in said city, for any such insurance company, without having first paid the tax and obtained the license aforesaid, shall forfeit and pay to the said corporation a fine of forty dollars for every such offence. Corp. Laws, 78.

Pawn Brokers

Any person or persons within the corporation of Washington City, to exercise or deal in the business or employment of a pawnbroker, must first pay a tax of one hundred dollars per annum, for a license therefor, to the Mayor; and any person or persons who shall exercise or deal in such business or employment, without having first obtained such license, shall forfeit and pay to said corporation the sum of forty-five dollars for every such offence. Corp. Laws, 81.

Intestate's Estate.

If the intestate leave a widow, and a child or children, administration at the discretion of the Judge of the Orphans' Court, shall be granted either to the widow or child, or one of the children.

If there be a widow, and no child, the widow shall be preferred, and next to the widow or children, a grand child shall be preferred.

If there be neither widow, nor child, nor grand child, the father shall be preferred.

If there be neither widow, nor child, nor grand child, nor father, brothers and sisters shall be preferred, and next to brothers and sisters, the mother shall be preferred.

If there be neither widow, nor child, nor grand child, nor father, nor brother, nor sister, nor mother, the next of kin shall be preferred.

Males shall be preferred to females in equal degree of kin.

Relations of the whole blood shall be preferred to those of the half blood in equal degree, and relations of the half blood shall be preferred to relations of the whole blood in a remoter degree.

Relations descending shall be preferred to relations ascending in the collateral line; that is to say, (for example,) a nephew shall be preferred to an uncle.

None shall be preferred in the ascending line beyond a father or mother, or in the descending line below a grand child.

A female sole shall be preferred to a married woman in equal degree.

Where a female is entitled, administration may be granted to her husband, provided he be capable.

Relations on the side of the father shall be preferred to relations on the side of the mother in equal degree.

If there be no relations, administration shall be granted to the largest creditor applying for the same.

If there shall be neither husband, nor wife, nor child, nor grand child, nor father, nor brother, nor sister, nor mother, or if these be incapable or decline, or refuse to appear on proper summons or notice, or if other relations and creditors shall neglect to apply, administration may be granted, at the discretion of the Judge of the Orphans' Court. Act of Maryland, 1798. Ch. 101, Sub. Ch. 5.

Descents.

Any estate in fee simple, fee simple conditional, or fee tail in any lands, tenements, or hereditaments lying in the District of Columbia, of which any person shall die seized and intestate, shall descend to the kindred of such person, in the following order, to wit:

First to the child or children, and their descendants, if any, equally; and if no child or descendant, and the estate descended to the intestate on the part of the father, then to the father; and if no father living, then to the brothers and sisters of the intestate of the blood of the father, and their descendants equally; and if no brother or sister as aforesaid, or descendant from such brother or sister, then to the grandfather on the part of the father; and if no such grandfather living, then to the descendants of such grandfather, and their descendants in equal degree equally; and if no descendant of such grandfather, then to the father of such grandfather; and if none such living, then to the descendants of the father of such grandfather in equal degree, and so on, passing to the next lineal male paternal ancestor; and if none such, to his descendants in equal degree without end; and if no paternal ancestor, or descendant from such ancestor, then to the mother of the intestate; and if no mother living, to her descendants in equal degree equally; and if no mother living, or descendants from such mother, then to the maternal ancestors and their descendants in the same manner as is above directed as to the paternal ancestors, and their descendants; and if the estate descended to the intestate on the part of the mother, and the intestate shall die without any child or descendant as aforesaid, then the estate shall go to the mother; and if no mother living, then to the brothers and sisters of the intestate of the blood of the mother and their descendants in equal degree equally; and if no such brother or sister or descendant of such brother or sister, then to the grandfather on the part of the mother; and if no such grandfather living, then to his descendants in equal degree equally; and if no such descendant of such grandfather, then to the father of such grandfather; and if none such living, then to his descendants in equal degree, and so on, passing to the next male maternal ancestor; and if none such living, to his descendants in equal degree; and if no such maternal ancestor or descendant from any maternal ancestor, then to the father of the intestate: and if no

father living to his descendants in equal degree equally; and if no father living or descendant from the father, then to the paternal ancestors and their descendants in the same manner as is above directed as to the maternal ancestors; and if the estate is or shall be vested in the intestate by purchase, and not derived from or through either of his ancestors, and there be no child or descendant of such intestate, then the estate shall descend to the brothers and sisters of such intestate of the whole blood, and their descendants, in equal degree equally; and if no brother or sister of the whole blood or descendants from such brother or sister, then to the brothers and sisters of the half blood, and their descendants, in equal degree equally; and if no brother or sister of the whole, or half blood, or any descendant from such brother or sister, then to the father; and if no father living, then to the mother; and if no mother living, then to the grandfather on the part of the father; and if no such grandfather living, then to the descendants of such grandfather in equal degree equally; and if no such grandfather, or any descendant from him, then to the grandfather on the part of the mother; and if no such grandfather, then to his descendants in equal degree equally, and so on without end, alternating the next male paternal ancestor and his descendants, and the next male maternal ancestor and his descendants, and giving preference to the paternal ancestor and his descendants; and if there be no descendants or kindred of the intestate as aforesaid to take the estate, then the same shall go to the husband or wife, as the case may be; and if the husband or wife be dead, then to his or her kindred in the like course as if such husband or wife had survived the intestate, and then had died entitled to the estate by purchase; and if the intestate has had more husbands or wives than one, and all shall die before such intestate, then the estate shall be equally divided among the kindred of the several husbands or wives in equal degree equally. Act of Maryland, 1786. Ch. 45.

Hawkers and Pedlars.

Any person who shall hawk, or carry about from place to place, in Washington City, any goods, wares, or merchandise, excepting such as are manufactured within the corporate limits of said city, selling, or offering the same for sale, without having previously paid the sum of fifty dollars, and obtained a license therefor from the corporation, shall for-

feit and pay for every such offence, the sum of twenty dollars. Corp. Laws, 90.

Libel.

A libel in general is a malicious publication, in printing or writing, or by signs, pictures, or hieroglyphics, tending either to injure society generally, or to blacken the memory of one dead, or the reputation of one living, and expose him to public hatred, contempt, or ridicule. Whart. Crim. Law, 733. Christianity is a part of the common law of the land, and maliciously to revile it is indictable as a libel. Whart. Crim. Law, 736. 20 Pick. 206. 4 Black. Com. 60. Story's Miscel. Writings, 451.

Blasphemy against God, contumelious reproaches and profane ridicule of Christ or the Virgin Mary, or the Holy Scriptures, are libellous offences at the common law, whether uttered in words, writing, or otherwise. 11 Serg. & Rawle, 394. 8 Johnson, 290.

Any public show or exhibition which outrages decency, shocks humanity, or is *contra bonos mores*, is a libel. 3 Day's Cases, (Conn.) 103. 2 Stat. 791. In order to constitute a libel, it is not necessary that any thing criminal should be imputed to the party injured; it is enough if the writer has exhibited him in a ludicrous point of view; has pointed him out as an object of ridicule or disgust; and has, in short, done that which has a natural tendency to excite him to revenge. 2 Wils. 403. 3 Camp. 214. 5 Binn. 349.

If the matter be understood as scandalous, and is calculated to excite ridicule or abhorrence against the party intended, it is libellous, however it may be expressed. 5 East, 463. Chit. Cr. Law, 868.

It is a libel to print or write and publish these words, "He is a lying, slanderous rascal." Snowdon vs. Lindo, 1 Cranch, C. C. R. 569. Evidence which shows that a libel came to the hands of the person libelled, or to the hands of another person, who read it, will be a sufficient publication. 2 Serg. 581. 2 Camp. 142. 2 Salk. 698.

The transmission of a sealed letter by mail, containing libellous matter, is a sufficient publication, and the defendant in such case may be indicted for a publication either in the county in which the letter was mailed, or that to which it was directed. 5 Hump. 112. 1 Hawk. P. C. C. 73, S. 11. R. vs. Burdett, 4 B. & A. 95. A publication, though defamatory, yet if written *bona fide*, or in confidence, or with a

view of investigating a fact in which the party making it is interested, is not a libel. 4 B. & Ald. 871.

A person has a right to communicate to any other any information he is possessed of, in a matter in which they have a mutual interest. T. C. & P. 680.

It is an admitted rule of English and American law, that the truth of the libel is not admissible in evidence or justification. 3 Greenl. Ev. 164. 2 Kent. Com. 19, 24. 4 B. & Ald. 95. 9 C. & C. 65. Douglas, R. 387. The publisher of a libel is liable to be punished criminally, by fine and imprisonment in the common jail of the district, at the discretion of the Court; and is also subject to an action on the case for damages by the party aggrieved, and both remedies may be pursued at the same time. 2 Clutty's Crim. Law, 875. Holt on Libels. Starkie on Slander and Libels. 1 Harr. Dig. Case 1.

Threatening Letters.

Sending threatening letters to persons for the purpose of extorting money, is a misdemeanor at common law, and punishable with fine and imprisonment in the common jail, at the discretion of the Court. Hawk. B. 1, C. 53. 2 Russ. on Crimes, 575. 4 Blk. Com. 126.

To be indictable, the threat must be of a nature calculated to overcome an ordinarily firm and prudent person. The party who makes a threat, or who menaces destruction or injury to the life, person or property of another, may be held to bail for his good behavior. Com. Dig. Battery, (D.) 13 Vin. Ab. 357.

Frauds and Perjuries.

Fraud is any trick or artifice employed by one person to induce another to fall into an error, or to detain him in it, so that he may make an agreement contrary to his interest. The fraud may consist either in the misrepresentation, or concealment, of a material fact.

Fraud avoids a contract *ab initio*, both in law and in equity, whether the object be to deceive the public, or third persons, or one party endeavor thereby to cheat the other. 1 Fond. Tr. Equity. Bl. R. 465. Douglas, R. 450. 3 Bur. R. 1909. The Statute 29 Car. 2 C. 3, commonly called the Statute of Frauds and Perjuries, is of force in this district, except the part relating to the jurisdiction of the Ecclesias-

tical Courts; and also wherein it has been superseded by the testamentary laws, and certain other modifications, which provides *inter alia*, that no action shall be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate; or to charge any person upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments; or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized. Author's Appendix to Shep. Touchstone. Also Appendix to 2 Ev. Rob. on Frauds.

Extortion

Is the unlawful taking by any officer, by color of his office, any money or thing of value that is not due him, or more than is due, or before it is due; and is punishable with forfeiture of office, (either consequential or immediate,) fine and imprisonment in the common jail of the district, at the discretion of the Court. 4 Bl. Com. 141. Hawk, P. C. Ch. 68. 1 Russ. Cr. 144.

To constitute extortion, there must be the receipt of money or something of value; the taking a promissory note, which is void, is not sufficient to make an extortion. 2 Mass. R. 523. Co. Litt. 168. 1 Yeates, 71.

Duelling.

If any person shall, in the District of Columbia, challenge another to fight a duel, or shall send or deliver any written or verbal message, purporting or intended to be such challenge, or shall accept any such challenge or message, or shall knowingly carry or deliver any such challenge or message, or shall knowingly carry or deliver an acceptance of such challenge or message, to fight a duel in or out of the said district, and such duel shall be fought in or out of the said district, and either of the parties thereto shall be slain or mortally wounded in such duel, the surviving party to

such duel, and every person carrying or delivering such challenge or message, or acceptance of such challenge or message as aforesaid, and all others aiding or abetting therein, shall be deemed guilty of felony, and upon conviction thereof, in any Court competent to the trial thereof, in the said district, shall be punished by imprisonment and confinement to hard labor in the penitentiary, for a term not exceeding ten years, in the discretion of the Court.

If any person shall give or send, or cause to be given or sent, to any person in the District of Columbia, any challenge to fight a duel, or to engage in single combat with any deadly or dangerous instrument or weapon whatever; or if any person in said district shall accept any challenge to fight a duel, or to engage in single combat with any deadly or dangerous instrument or weapon whatever, or shall be the bearer of any such challenge, every person so giving or sending, or causing to be given or sent, or accepting such challenge, or being the bearer thereof, and every person aiding or abetting in the giving, sending, or accepting such challenge, shall be deemed guilty of a high crime and misdemeanor, and on conviction thereof, in any court competent to try the same, in said district, shall be punished by imprisonment and confinement to hard labor in the penitentiary, for a term not exceeding five years, in the discretion of the Court. Act of Congress, February 20, 1839; Stat. at Large, Vol. 5, 318. And by Sec. 6, of the said act, it is provided that any person offending against the provisions thereof, may be a competent witness against any other person offending in the same transaction, and may, at the discretion of the court, be compelled to give evidence before any grand jury, or on any trial in court; but the person so testifying shall not thereafter be liable to prosecution for the same matter, nor shall the testimony so given be used against him in any case whatsoever.

Slaves.

The Act of Maryland of 1796, Chap. 67, and Act of Maryland of 1797, Chap. 15, concerning the importation of slaves, are in force in the District of Columbia, although in terms they are applicable only to the State of Maryland; by which any slave brought into said district, for sale, or to reside therein, shall thereupon, immediately be free. Provided that any citizen of the United States, coming into said district, with a *bona fide* intention of settling therein,

may import, at the time of such removal, or within one year thereafter, and retain as a slave, any slave, his property at the time of removal, if such slave, or his or her mother, have been resident of one of the United States three years next preceding such removal; and such citizens dying within the said year, their executors or administrators may bring in such slaves within one year after the said death, and also the issue of such slaves born after the removal of the person dying; and this same privilege of importing is extended to the guardians of infants, entitled on such persons dying within one year after the removal, and to male infants so entitled after attaining the age of twenty-one, and to female infants after attaining the age of sixteen, and to include the issue, as in the case of executors; such persons so removing, not to sell or dispose of any slaves so imported, or their increase, unless they have resided in said district three years next preceding such sale, excepting dispositions by will, by law for debts, or in consequence of intestacy.

There is no law affecting the right of persons travelling or sojourning in said district with any slave, such slave not being sold, or otherwise disposed of, in the district; but carried, or attempted to be carried by the owner, out of the district. Vide Sec. 4, Act of Maryland, 1796, Chap. 67.

By Act of Congress of 3d May, 1802, Chap. 52, it is provided that Maryland slaves may be brought into the District of Columbia, and held or disposed of in the same way as practised therein prior to the cession of said district to the United States.

A slave brought from any place except Maryland, into the District of Columbia, more than a year after his master, and sold, or to be sold, or to reside, is entitled to freedom. 1 Cranch, C. C. R. 276, 370. 2 Cranch, C. C. R. 373.

A slave, imported into the District of Columbia, for sale, and sold within three years after such importation, is entitled to freedom. 2 Cranch, C. C. R. 261, 373. 4 Cranch, C. C. R. 1.

A slave is not entitled to freedom from being hired to a resident of the District of Columbia for a limited time. 2 Cranch, 405. A slave does not acquire a right to freedom by being sent out of the District of Columbia for sale, and, not being sold, brought back, after eight or nine months absence. 2 Cranch, C. C. R. 102. A slave carried from the District of Columbia, by its owner, for a temporary residence only, and brought back and sold to a resident of said

district, does not thereby become entitled to freedom. 2 Cranch, C. C. R. 418.

Slaves of Non-residents.

The following tax is imposed upon slaves of non-residents, hired to persons residing within the City of Washington, D. C., to wit: On every male slave above the age of eighteen years, and under forty-five, twenty dollars per annum; on every male slave under eighteen and above twelve years of age, twelve dollars per annum; and on every female slave between fifteen and forty-five years of age, two dollars per annum; and any non-resident who shall hire a slave to labor, or do service in said city, without having first paid the above tax, shall forfeit and pay the sum of twenty dollars for every such offence; and any person who shall hire any slave belonging to a non-resident, for whom the said tax is not paid, shall in like manner forfeit and pay the sum of twenty dollars for every slave so hired; and if such person shall continue to employ such slave, so hired, he or she shall forfeit and pay the sum of five dollars for every month he or she shall continue to employ such slave.

Every person bringing or sending any slave into said city, to hire or reside therein, shall, within twenty days thereafter, cause the said slave to be recorded on the books of the corporation, and shall deposit with the Register an affidavit, that such slave is *bona fide* his or her property; and every person neglecting or refusing so to do, shall forfeit and pay the sum of twenty dollars. Corp. Laws, 255, 256.

Slave Trade, and Slave Depots.

Any slave whatever brought into the District of Columbia, by its owner, or by the authority or consent of its owner, for the purpose of being sold, or for the purpose of being placed in depot, to be subsequently transferred to any other State or place to be sold as merchandize, shall thereupon become liberated and free.

The corporations of the cities of Washington and Georgetown, have power, from time to time, and as often as may be necessary, to abate, break up, and abolish any depot or place of confinement of slaves brought into the said district for the purpose of being sold, or transferred to any other State or place as merchandize. Act of Congress, September 20, 1850. Stat. at Large, Vol. 9, 467.

Free Negroes and Mulattoes.

Every negro or mulatto slave, who shall be manumitted or declared free in any manner or form whatsoever, in Washington city, D. C., and every free negro or mulatto, who shall come within said city, shall, within five days thereafter, exhibit to the Mayor satisfactory evidence of his or her title to freedom, and enter into bond with one good and sufficient white freehold security, in the penalty of fifty dollars, conditioned for his or her good and orderly conduct, and a like bond and surety for each and every member of his or her family, to be executed in the same manner, conditioned for the good and orderly conduct of the person named therein, that he or she does not become chargeable to or commit any offence against said corporation, or against the laws of the United States; which bonds shall be renewed every year, on the tenth day of December, and on failure so to do, he, she or they, shall forfeit and pay a sum not exceeding twenty dollars; and he, she or they, and also the persons for whom such failure shall occur, being minors, shall be ordered by the Mayor to depart forthwith from the city, and on failure to do so shall be committed to the workhouse, and be employed at the discretion of the Mayor, until such conditions shall be complied with; not exceeding six months in any one commitment.

And every negro or mulatto who shall be committed or declared free in any manner or form whatsoever, in said city, and every free negro or mulatto who shall come into said city, shall within five days thereafter, and on the tenth day of December thereafter, annually record his or her name, and the name or names of every member of his or her family, on the books of said corporation, and at the same time pay into the treasury of said corporation for himself, herself, and each and every member of his or her family so registered, the sum of fifty dollars; and he, she, or they, failing so to do, shall forfeit and pay to said corporation a sum not less than ten, nor exceeding twenty dollars, and shall be ordered by the Mayor to depart forthwith from said city; and failing to depart therefrom, shall be committed to the workhouse, &c., &c., as above stated.

But there is no law to apply to or affect the condition of any free negro or mulatto, who may come into said city in the service of any transient person or member of Congress, while in such employment, or who may have been sent to

the city by his or her employer on temporary business. Corp. Laws, 252, 253.

Landlord and Tenant.

By the Statute, 8 Anne, Chap. 14, which is of force in the District of Columbia, it is provided that no goods upon any tenement leased shall be taken by execution, unless the party at whose suit the execution is sued out, shall, before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for rent for the premises, provided that the arrears do not amount to more than one year's rent; and in case the arrears shall exceed one year's rent, then the party at whose suit, &c., paying the landlord, or his bailiff, one year's rent, may proceed to execute his judgment.

For any kind of rent due and in arrear, which is certain in its quantity, extent, and time of payment, or capable of being reduced to certainty, by calculation, a distress may be made, by warrant from the landlord, directed to the Marshal, or any constable or bailiff; such warrant to be accompanied by the landlord's affidavit of the amount of rent due, and the time it became due. Taylor's Landlord and Tenant, 561. 3 Bl. Com. 6. Co. Lit. 96, a. 13 Serg. & Rawle, 64. 3 Penn. R. 30. Of what may be taken in distress for rent, and what not, *vide* page 5.

Where a party is in possession of premises, under an agreement for a lease, and no other circumstances exist, whence an implied tenancy can be raised, since no rent is due for the occupation, but only, if any, a compensation in nature of rent, the owner cannot distrain for non-payment. 2 Taunt. 148. In order to sustain the right of distress, the relation of landlord and tenant must be actually completed, and not merely in contemplation; there must be an actual demise, and not a mere agreement for a lease. 2 Cow. R. 660. 1 Bay. R. 315. 5 B. & A. 322. When on a lease, rent is made payable in repairs, being for a sum certain, distress may be made. 10 Johns. R. 91. Distress for rent will not lie, unless there be an agreement in writing or by parole, for a sum certain, or capable of being reduced to certainty by calculation. 9 Wend. R. 222. 1 Bailey, R. 500. Taylor's Landlord and Tenant, Sec. 561. The landlord's right of distress is not extinguished by an unsatisfied judgment for rent. Taylor's Landlord and Tenant, Sec. 565. 13 Johns. R. 240. Nor does the fact of taking a

promissory note prejudice the landlord's right to distrain unless there is an agreement that it shall operate as a suspension of the right. 6 Cow. R. 103. 3 Penn. R. 487. Bull. Nisi Prius, 182. The acceptance of a bond for rent, or an order which is dishonored, have been held not to extinguish the right of distress, although a receipt in full, for the amount of rent due was taken. 20 Johns. R. 407. 4 McCord, R. 544. 1 Nott & McC. R. 187. 3 McCord, R. 484.

A distress for rent cannot be made in the night, but must be taken in the day time, after sunrise and before sunset. Co. Lit. 142, a. 6 C. & P. 212, a.

A distress for rent cannot be made upon the day in which the rent is payable, for it cannot be due until the last moment of the day. Doct. & St. 1, 2, Chap. 9. Co. Lit. 47, b. Hardw. 297.

A distress for rent can only be made for rent due and in arrear, unless there is an agreement that a distress may be made before the rent is due. Hardin, (Ky.) R. 297. 1 Laund. 287. 1 Qust. 47, b. n. 6. 2. T. R. 600.

A distress can only be made upon some portion of the demised premises out of which the rent issues. 3 Cow. R. 269. 1 Wend. R. 309. 1 Harp. R. 338.

As rent cannot issue out of a mere easement, or incorporeal hereditament, upon the demise of a room, with a right of a common passage along an entry leading from such room into the street; it was held that the landlord could not seize goods of the tenant kept in such common passage. 5 Hill, (N. Y.) R. 481. A distress may be made in any house or building upon the land demised, either through the doors or windows. (1 Rol. Abr. 671, 1, 7, 17.) But if these be fastened, they cannot lawfully be broken, for inclosures or fences cannot be broken to take a distress. Co. Lit. 161, a. Semayn's Case, 5 Co. R. 91. But if the outer door be open, the inner may be broken. (4 Johns. R. 352. Comb. 17. 1 Bay. 358. 2 Hawk. 246. Bull Nisi Prius, 81.) Or if, after having entered lawfully, the officer is forcibly turned out of possession, he may break the door to re-enter. 11 M. & W. 465.

To make an officer a trespasser, it is enough that the outer door be shut; lifting a latch is as much a breaking in law, as the forcing a door bolted with iron; even the sliding down of a window, fastened by pulleys, would be a breaking. 1 Hill (N. Y.) R. 337. By Statute, 11 Geo. 2, Chap. 19, which is of force in this district, if the tenant's goods be

removed from the demised premises fraudulently and clandestinely, or between sun set and sun rise, to prevent his landlord from distraining the same, such landlord, or any person by him lawfully empowered, may, in thirty days next after such conveyance, seize the same wherever found, and dispose of the same in such manner as if they had been distrained on the premises, provided no sufficient distress remained on the premises after such removal. Taylor's Landlord and Tenant, Sec. 576. 4 D. & R. 33. 1 Mood. & M. 533. 3 Esp. R. 16.

The landlord shall not distrain any goods which shall have been previously sold, *bona fide*, and for a valuable consideration, to any person not privy to such fraudulent removal. Taylor's Landlord and Tenant, Sec. 577, and numerous authorities there cited.

The goods of ambassadors or other public ministers of a foreign prince or State, and of their domestic servants, are, by the law of nations, and for reasons of public policy, privileged from distress. Vattel, Book 4, Chap. 9. 3 T. R. 80.

Things delivered to a person exercising a public trade, to be carried, wrought, worked up or managed, in the way of his trade or employ, have always been privileged, for the sake of trade and commerce generally, and cannot be distrained for rent due from the person in whose custody they are. 1 Inst. 47, a. 2 Mood. 61. Mills, 512. A horse sent to a farrier's shop, cloth sent to a tailor's, whether made up into garments or not, cannot be distrained for rent due from the farrier, or tailor.

Goods of a principal, in the hands of an auctioneer, factor, consignee, or other person, for sale, cannot be distrained for rent due from the auctioneer, factor, or other person; nor can goods consigned to a broker, for sale, and placed by him for safe keeping in a warehouse, be distrained for rent due for the warehouse. Co. Lit. 47, a. 19 Martin, R. 337. A horse standing at livery is distrainable for rent due from the livery stable keeper. 3 Burr. 1478. 1 Blk. R. 483, though the contrary doctrine has been held upon principles of public policy. 2 McCord, R. 39.

Deer, cats, dogs, rabbits, and all animals, *feræ naturæ*, or wild, if kept in a private inclosure, for the purpose of sale or profit, are distrainable. 1 Willes, 50. 2 Willes, 48.

Things in actual use are protected from distress, as the hatchet with which a man is working, the horse he is riding, a cart loaded with grain, if a man be upon it. 1 Vent. 36.

Taylor's Landlord and Tenant, Sec. 587, to 596, and numerous authorities there cited.

By Act of Maryland of 1793, Chap. 43, where lands, tenements, &c., have been let or leased for one or more years, or at will, and the lessor, his executors, administrators or assigns, are desirous to repossess said lands, tenements, &c., after the expiration of the term for which they were demised or let, he shall give notice in writing to the tenant in possession, to remove from the same, one month before the expiration of the term; as if the term expire on the fourth of July, the notice to quit must be given on or before the fourth day of June; and if the tenant refuse to quit, any two justices, upon being satisfied of such facts, may issue their warrant to the Marshal, to summon twelve good and lawful men to appear before them, on a day named in the warrant, upon the premises; and upon the finding by the jury of the above facts, the justices shall award restitution of the premises, and issue their warrant to the Marshal, commanding him to deliver the same to the lessor; and if required by the lessor, &c., the justices may give judgment, and issue execution for costs against the tenant holding over. Under the above act, however express the stipulation as to the termination of the tenancy, one month's notice must be given. If the tenancy is from year to year, there must be half a year's notice to quit; as if the year expire on the fourth day of July, the notice to quit must be given on or by the fourth day of January, otherwise the tenant will be in for another whole year from the fourth day of July.

A lease for years, without any number being stated, is a lease for two years certain. Rol. Abr. Leases, (L.) 3. Where the relation of landlord and tenant is created, without any agreement as to time, the inference now is, that such tenancy is from year to year, until the contrary be proved. (2 Burr. 1609. 1 T. R. 163. 3 T. R. 16. 4 T. R. 471. 2 Salk. 414. Blk. Rep. 1172. 8 T. R. 3. 1 East, 451,) and therefore not determinable by either party without half a year's notice. The notice must be given to the immediate tenant or his assignee. 6 B. & C. 41.

A lessor cannot give a valid notice to a sub-lessee, or an under tenant to the original landlord, since there is neither privity of estate nor contract between them. 14 East, 234. 2 N. R. 330. The landlord's notice to his tenant will enable him to recover the premises against an under tenant. Taylor's Landlord and Tenant, Sec. 481. 10 Johns. R. 270. 2 Bos. & Pul. 230. Where the tenancy is for less than a year, as

a quarter, a month, or a week, the notice to quit must be a quarter, a month, or a week, corresponding with the letting. 1 Esp. N. P. C. 94. The notice must be explicit and positive; in the words of the Statute, it must require the tenant to remove from the premises. It should not, therefore, in any case, give the tenant the option of leaving the premises or not, by entering into a new contract upon certain conditions. In case there should be an obvious mistake in some part of the notice, but yet, upon the whole, it is so certain and direct as to make it impossible that the person receiving the notice should have been misled by it, it will be good. *Taylor's Landlord and Tenant*, Sec. 483. *Matthews vs. Jackson*, Doug. 175.

By Statute 4 George 2, Chap. 28, which is of force in this district, if the tenant hold over, after the expiration of a special term of tenancy, and after due notice to quit, he is liable for double the value of the rent for the time he so holds over. To enable the landlord to recover double rent for holding over, the lease must, however, be for a specified term.

A renting at sixty dollars a year, payable monthly, is not for a specified term, and will not authorize a judgment for double rent. *Nixdorff vs. Wells*, 4. *Cranch's C. C. R.* 350.

By Statute 11, Geo. 2, Chap. 19, which is of force in this District, the penalty, when the tenant gives notice that he means to quit, and does not, is double rent. *Douglass*, 175-6.

Notice to quit is unnecessary in any case where the relation of landlord and tenant does not exist. *Taylor's Landlord and Tenant*, Sec. 471, and numerous authorities there cited.

Unless the landlord binds himself by an express agreement to that effect, the tenant cannot compel him to make repairs. Nor can the tenant make repairs at the expense of his landlord unless there is an express agreement between them authorizing him to do so. *Taylor's Landlord and Tenant*, p. 208. 6 Cow. R. 475.

And if the premises become uninhabitable by fire, and the landlord having insured them, has recovered the insurance money, the tenant cannot compel him, either in law or equity, to expend the money so recovered, in rebuilding, unless he has expressly engaged to do so. Nor will a Court of equity, under such circumstances, prevent the landlord from even suing for the rent, until he shall have rebuilt the premises; for the tenant—unless there is an express agreement to the contrary, or the landlord is under a covenant to repair—is obliged to continue the payment of rent during

the whole term, although the premises are untenable, or even burnt down in the mean time. 1 Term R. 312; 8 Paige 437; 1 Simon R. 146; 18 Ves. R. 115.

A lease of premises, for the purposes of prostitution, or any other immoral object, is a contract against good morals, and absolutely void. 1 Esp. R. 13; R. and M. 51. But if the original agreement was honest, and the premises are subsequently appropriated to vicious uses, or if the woman merely lodges there, and receives her visitors elsewhere, the lease is not thereby avoided at common law. 2 Car. & Pay. 347.

The law will imply the existence of a tenancy in some cases, where there has been no distinct agreement between the parties, or where, from various causes, the agreement, may have become inoperative.

Thus, the mere occupation of premises, previous to or pending the execution of a lease, or the payment of rent under an invalid agreement, are circumstances from which this relation will be implied, sufficient to authorize the collection of subsequently accruing rent. 4 M. & S. 347; 3 Bing. 361; 5 Dow. & Ry. 206; 2 B. & C. 478; 4 Cow. R. 473. But if no rent has been paid, and no other circumstance exists from which a consent to a tenancy can be inferred on the part of the owner, a tenancy cannot arise from mere occupation. As if a man gets into a house without the privity of the owner, although they afterwards enter into a negotiation for a lease, but differ about the terms; or if, after being let into possession, he agrees to sign a written lease, and also find a surety for the rent, but does neither; no species of tenancy is created thereby, but the occupant is a mere trespasser. 2 Bing. N. C. 749; 2 Camp. 505; 3 B. & A. 326.

Where a tenancy by an express agreement is created, it is either by *parole* or by deed. The former mode embraces all cases where the parties agree by mere word of mouth, or by a writing not under seal. No particular form of expression is necessary in either case to create an immediate demise. Any permissive holding is sufficient for the purpose, and may be contained in a series of letters, or a brief memorandum; and any evidence will establish the fact, from which it appears to have been the intention of one of the parties to dispossess himself of the premises, and of the other to assume such possession, for any determinate period, whether the words made use of run in the form of a license, a covenant, or an express agreement. 2 Fairf. R. 478; 3 McCord. R. 211; 15 Wend. R. 379; 4 Burr. 2208; 5 Scott. R. 531. But in this connection, vide "Frauds and Perjuries," p. 15 of this work.

In leases for years, an actual entry is necessary to vest the estate in the lessee; for the lease gives him only a right to enter, or an *interesse termini*.

If the time from which the tenancy is to commence does not otherwise appear, it will be understood as commencing from the time the papers are dated; but if not dated, then from the time they were delivered. If there were no writings, the tenancy will be considered as commencing from the day the tenant enters into possession, and not with reference to any particular quarter day. 15 Wend. R. 656; Co. Lit. 46; 4 Tolins. R. 230; 3 Camp. 511.

A receipt for rent, up to a particular day, is *prima facie* evidence of the commencement of the tenancy at that day. And if the tenant enters in the middle of a quarter, and afterwards pays rent to the beginning of a succeeding regular quarter, from which time he pays half yearly, his tenancy commences from the quarter day to which he paid up. 6 Esp. R. 10. As soon as the tenancy has expired, the tenant ought peaceably and quietly to surrender the premises, together with all such improvements, buildings, and fixtures as belong to them; and his neglect or refusal will subject him to certain penalties imposed by law. If he has let the whole, or any part of the premises, to an under tenant, who is in at the time of the determination of the term, he must get him out, otherwise he will not be in a situation to render that complete possession to which the landlord is entitled.

If he refuse to quit, the landlord is not justified in resorting to force to put him out, but must pursue his legal remedies. 1 Man. & Gr. 644; 11 Pick. R. 379.

If, however, the tenant and his family be gone away, and the house locked up, no one being in possession, the landlord would be justified in breaking into the house, and obtaining possession. 6 Car. & Pay. 284; 7 Moore, 574; 1 Bing. 158. And unless the entire possession is delivered up, the tenant's responsibility will not cease, although the lease shall have expired, and it may have become impossible for the tenant to give the landlord full possession, in consequence of the obstinacy or ill will of an under tenant, to whom he has let a part or the whole of the premises, and who refuses to quit, for in such case, it has been held the landlord may refuse to accept the possession, and hold the original tenant liable. 1 Esp. 57. As regards fixtures, the rule is understood to be, that, upon principles of general policy, a tenant is permitted to carry away all such fixtures of a chattel nature as he has himself erected upon the demised premises, for the purpose of ornament, domestic con-

venience, or to carry on trade, even though affixed to the soil or freehold; provided the removal can be effected without material injury to the freehold. 1 Salk. R. 368; 15 Mass. R. 159. Domestic fixtures are all such articles as a tenant fixes to a dwelling house, in order to render his occupation more comfortable or convenient, and may be separated from it without doing substantial injury; such as furnaces, stoves, cupboards and shelves, bells, &c. (4 B. & C. 686; 7 Taunt. 191; 1 B. & C. 77; 5 B. & A. 625; 6 T. R. 379; 7 C. & P. 328; 6 Bing. 437.) Or things merely ornamental, as painted wainscots, pier and chimney glasses, although attached to the wall with screws, marble chimney pieces, grates, beds nailed to the walls, window-blinds and curtains. 1 P. Wms. 94.

But things which he affixes to the house in a more permanent manner, in order to complete it, such as hearth-stones, doors and windows, closets, presses, locks and keys, he cannot take away, because such things are peculiarly adapted to the house in which they are fixed, and if taken away would injure the premises. (1 Salk. 368; 3 East, 38; 2 Black. R. 111; 2 Bulst. 103; Liford's case, 11 Co. 50; 2 Bulst. 113; Cro. Jac. 329; 2 Black. R. 1111; 2 Ves. & B. 349.) So, also, all substantial additions made to the house become part of the freehold, and are immoveable, such as conservatories, green houses, hot houses, pig styes, stables, wash houses, and other out houses; neither can he remove shrubbery, flowers, &c., planted by him in the garden. 2 B. & R. 54; 4 B. M. 240; 2 Stark. C. 403; 1 W. & M. 720; S. C. 4 B. & Ald. 656; 2 East, 91; 1 Camp. 227. The rule as regards the removal of any fixture, requires that the article be capable of removal, without the destruction or serious injury to the freehold; that is, the premises must be in as good plight and condition after removal as they were before annexation. 4 Pick. R. 311; 1 Har. & Johns. 289; 3 Atk. R. 13. It is to be understood, also, that whenever a fixture is removed the tenant must repair any injury the premises may sustain by the act of removal. Taylor's Landlord and Tenant, p. 368; 13 Mees. & Wels. 197.

The decisions, also, uniformly agree, that whatever fixtures the tenant has a right to remove must be removed before his term expires, or at least before he quits his possession; for if the tenant leave the premises without removing them, they then become the property of the landlord. 1 H. Black. 258; 1 B. & A. 394; 7 Taunt. R. 191.

Forcible Entry and Detainer.

A forcible entry or detainer is committed by violently taking or keeping possession of lands and tenements with menaces, force and arms, and without the authority of law. 4 Blac. Com. 148. 1 Russ. C. & M. 304.

Where a party entering on land, in possession of another, either by his behavior, speech, threats, menaces, signs or gestures, gives those who are in possession just cause to fear that he will do them some bodily harm if they do not give way to him, his entry is esteemed forcible. 4 Ired. 305. 2 Rice, 340. 1 Russ. on cr. 309. 2 Brev. 445. 2 Ird. 127. 1 Yeates, 501. It seems that though a woman cannot be mulcted for a trespass on her husband's property, she may, "if she comes with a strong hand, under circumstances of violence, amounting to a breach of the public peace," be convicted of a forcible entry. *Rex vs. Smith*, 1 M. & Rob. 155—6. 5 C. & P. 201.

When the property of a defendant in an execution is in the house of a third person, a demand for admittance by the officer holding the execution, and a refusal upon the part of the person holding the property, will justify the officer in breaking the door, and entering the house. 6 Yerger, 525. But an entry by an open window, or by opening the door with a key, or by mere trick or artifice, such as by enticing the owner out, and then shutting the door upon him, or the like, without further violence, or if effected by threats to destroy the owner's goods or cattle merely, and not by threats of personal violence, is not deemed a forcible entry. Com. Dig. Forc. Ent. A. 3. 1 Hawk. c. 64. sec. 26—8. If, whilst the owner is out of his house, a person forcibly withhold him from returning to it, and in the meantime send persons to take possession of it peaceably, this is a forcible entry. 8 Cow. 226. 1 Hill, 240. 4 Johns. 198. Forcible detainer is, when a man, who enters peaceably, afterwards detains his possession by force; as if he threatens a corporal damage to him who attempts to enter. H. P. C. 139. 1 Sergt. & Rawle, 124. If he repels him with violence; or continues the door shut when justice demands entrance. H. P. C. 139. So if a lessee with force resists a distress for rent; or rescues the distress. Crompt. 39, b, 70. If the tenancy of a house be determined, and the tenant and his family have gone away, and lock the house up, no one being in possession, the landlord will be justifiable in breaking into the house and obtaining possession. 6 Car. & P. 284. But

if, after the expiration of the term, a tenant remains in possession of only a single apartment of the house; or if, after notice to quit, he abandons the house and locks it up, leaving some articles of furniture in it; the landlord is not justified in either case, forcibly to assert his right of possession, but, if he attempts to do so, will be guilty of forcible entry and detainer. 1 Scott, N. R. 473; 1 Man. & Gr. 644; 7 Moore, 574; 1 Bing. 158; 6 Car. & P. 284; 2 Jurist, 350. It is not forcible entry for an officer to enter a house to apprehend a felon. Com. Dig. Forc. Ent. (A. 3.) 342.

A forcible entry and a forcible detainer are distinct offences. 1 Sergt. & Rawle, 124; 8 Cow. 226; By Stat. 5 R. 2, 8; 15 R. 2, 2; 8 Hen. 6, 9; 31 Eliz. ch. 11; 21 Jac. 1. c. 15. Upon any forcible entry and detainer, or forcible detainer after peaceable entry, into any land or tenements; one or more justices of the peace taking sufficient power of the county, may go to the place and there record the force upon his own view or inspection, and upon such conviction, fine the offender according to his discretion, and commit him to prison, there to remain until such fine be paid, or secured to be paid; 1 Hawk. 142. 2 Harr. Ent. 60; Dalt. ch. 44; Sid. 794; Ld. Raym. 1515. And moreover the justice or justices have power to summon before them upon the premises a jury of twenty-four sufficient and indifferent persons, to try the forcible entry or detainer complained of, and if the same be found by that jury, then besides the fine on the offender, the justices shall make restitution, by the marshal, of the possession, without enquiring into the merits of the title; for the *force* is the only thing to be tried, punished and remedied by them; and the same may be done by indictment at the criminal court; and the party whose possession is so disturbed may also have an action of damages for the trespass. Vide 3 Pick. 31; 4 Johns. R. 150; 10 Johns. R. 304; 8 Cow. 226; 3 Serg. & R. 418; 4 Dall. 212; 3 Harr. & McHen. 428; 2 Bay., R. 325; 2 Nott & McC. 121; Com. Dig. h. t. Vin. Ab. h. t. Bac. ab. h. t. But this provision does not extend to such as endeavor to maintain possession by force, where they themselves or their ancestors have been in peaceable enjoyment of the lands, &c., for three years immediately preceding. 4 Comm. 148. And this may be alledged in stay of restitution, and restitution is to be stayed till that be tried, if the other will traverse the same, &c. Dalt. 312; See T. Raym. 85; 2 Sid. 149; Salk. 260.

If a man holds the possession by force, though his entry

was peaceable, the justices may remove him, if he had no right to enter; but, where the entry is at first peaceable and lawful, there, whether the justices may remove a forcible detainer, where it has not been peaceably held for three years, is a question; for the justices are not judges of the right, but of the possession only; and if a man be gotten peaceably into his own, it seems he may defend it by force; and where the jury have found *quoad* the entry *ignoramus*, and *quoad* the detainer *billa vera*, such indictment has been quashed, and the restitution granted upon it set aside, and a re-restitution awarded. 4 Bac. Ab. 327; Dalt. 301; Yelv. 99, 100; Cro. Ja. 151; Sid. 97, 414; H. P. C. 149; Hawk. P. C. C. 64, 32; 2 Salk. 588. If the defendant, after the finding of the grand inquest, denies the forcible entry or detainer, under 31 Eliz. 11, the justices must issue their warrant to the marshal, returnable the next day, requiring him to summon and return a *petit jury* to try the traverse; and if such forcible entry or detainer be found before such justice, then the said justice shall restore the party put out to the full possession of the same. A *certiorari* from the circuit court of the district is a *supersedeas* to the restitution, and said court may set aside the restitution after executed, if it be against law, or irregularly obtained, &c. 1 Salk. 154. If justices of peace exceed their authority, an information may be brought against them. A conviction for forcible entry, before a fine is set, may be quashed on motion; but after a fine is set it may not; the defendant must bring writ of error. 2 Salk. 450; 1 Tom. L. D. Tit. Forc. & Detr; 1 Salk. 106, 353; 1 Stra. 474; 2 Stra. 794.

Malicious Mischief

Is any malicious or mischievous injury to the person or rights of another, or to those of the public in general. 3 Greenl. 177; 2 Metc. 21; 5 Ird. R. 364; 8 Leigh, 719; 3 Dev. & Batt. 130. Such as the wanton or reckless destruction or injury of a horse or any animal whatever which may be the property of another; to be guilty of wanton cruelty to animals in general; to cast the carcass of an animal in a well in daily use; to poison domestic animals, fraudulently tear up a promissory note or other valuable paper, or maliciously break windows or doors belonging to another; to girdle or otherwise maliciously injure trees kept either for use or ornament; to put cow itch on a towel, with intent to injure a person about to use it; to break up a boat; to cut off

the hair of the tail or mane of a horse, when done maliciously; to discharge a gun with the intention of annoying and injuring a sick person in the immediate vicinity. 19 Wend. 420; 8 New Hamp. 208; 1 Dallas, 338; 2 Hawks, 460; 2 Browne, 251; 1 Wheeler's C. C. 490; 19 Wend. 419; 19 Pick. 1; 2 Hump. 39. The punishment for this offence is fine and imprisonment in jail at the discretion of the court; and the party injured may also have his civil remedies against the offender for the injury. Whart. Crim. Law, 605; 3 Cush. 558; 3 Yerg. 278.

Malicious Prosecution.

To maintain an action for this injury, the plaintiff must prove, that he has been prosecuted by the defendant, either criminally, or in a civil suit; and that the prosecution is at an end;—That it was instituted maliciously and without probable cause; and that he has therefore sustained damage. 4 Taunt. 516; 4 Co. 14; 6 Pick. 193; 24 Pick. 81; Addis. R. 270; 12 Conn. 219; 2 Penns. R. 11 Conn. 582; 1 Penns. R. 93, 156. Nor is the form of the prosecution material; the *gravamen* being, that the plaintiff has improperly been made the subject of legal process to his damage; as if his house has been searched under a warrant for smuggled or stolen goods; or, if a commission of lunacy has been taken out against him; or if special damage has resulted from a false claim of goods; or, if goods or money have been extorted from him by duress of imprisonment, or abuse of legal process; and it was done maliciously and without probable cause. 3 Burr. 1418; 2 Wils. 145; 1 T. R. 535; Gow, 20; 2 C. M. & R. 707; 1 Tyr. & Gr. 118; 4 Bing. N. C. 212; 3 Scott, 561; 6 Greenl. 421; 15 Pick. 453; 1 Peters, C. C. Rep. 210. An action lies against a mere informer when the proceedings are malicious. 5 Stew. & Port. 367. But an action does not lie against an attorney at law for bringing the action, when regularly employed. 16 Pick. 478; 6 Pick. 193. If it were malicious and unfounded, but there was probable cause for the prosecution, this action cannot be maintained. 3 Dowl. 160. Gow, 20. If there be reasonable or probable cause, no malice, however distinctly proved, will make the defendant liable. 1 T. R. 510; 5 B. & Ad. 588, 594; 8 C. & P. 11; 15 Pick. 321, 330. Probable cause for a criminal prosecution is understood to be such conduct on the part of the accused, as may induce the court to infer that the prosecution

was undertaken from public motives, or a reasonable ground of suspicion, supported by circumstances sufficient to warrant a cautious man in believing that the party is guilty of the offence. 1 Greenl. 135; 3 Dev. 454; 3 Wash. C. C. R. 81; Denio, 617. In the case of a private suit, it may consist of such facts and circumstances, as lead to the inference, that the party was actuated by an honest and reasonable conviction of the justice of the suit. 1 Wash. C. C. R. 247, 249. Whether the plaintiff has been prosecuted by indictment, or by civil proceedings, the principle of awarding damages is the same; and he is entitled to indemnity for the peril occasioned to him in regard to his life or liberty, for the injury to his reputation, his feelings, and his person, and for all the expenses to which he necessarily has been subjected. Bull. N. P. 13, 14; 3 Greenl. 305. If a full and correct statement of the case has been submitted to legal counsel, the advice thereupon given furnishes sufficient probable cause for proceeding accordingly. 5 Taunt. 277; 1 Stark. 502; 2 B. and C. 693. And if the party did *not withhold* any information from his counsel, *with the intent* to procure an opinion that might operate to shelter and protect him against a suit; but, on the contrary, if he, being doubtful of his legal rights, consulted learned counsel with a view to ascertain them, and afterwards pursued the course pointed out by his legal adviser, he is not liable to this action, notwithstanding his counsel may have mistaken the law. 4 Pick. 393. 3 Greenl. 310; 3 Mason, 102; 9 Metc. 268; 2 Greenl. on Ev. 449—459.

Execution, Attestation, Acknowledgement and Registration of Deeds.

Every conveyance, covenant, agreement and other deed, (except deeds of trust and mortgages,) whereby a right, title, or interest in real estate is conveyed, or purports to be, lying within the limits of the District of Columbia, which shall be acknowledged or proved and certified by any two justices of the peace of said District, or of any state or territory of the United States, under their hands and seals, and delivered to the clerk of said District to be recorded within six months after the sealing and delivery thereof, shall take effect and be valid as to all persons from the time of such acknowledgement or proof.

But all deeds of trust and mortgages, whensoever they shall be delivered to the clerk to be recorded, and all other

conveyances, covenants, agreements, and deeds, which shall not be acknowledged, proved, or certified and delivered to the clerk to be recorded within six months after the sealing and delivering thereof, shall take effect and be valid, as to all subsequent purchasers for valuable consideration, without notice, and as to all creditors, from the time when such deed of trust or mortgage, or such other conveyance, covenant, agreement or deed, shall have been acknowledged, proved, or certified, and delivered to the clerk to be recorded, and from that time only :

Provided, however, that if two or more deeds containing the same property, after having been so acknowledged, or proved and certified, be delivered to the clerk to be recorded on the same day, that which shall have been first sealed and delivered shall have preference in law.

Every title-bond, or other written contract in relation to land, may be acknowledged, certified, and recorded, in the same manner as deeds for the conveyance of land ; and such proof or acknowledgement, and certificate, and the delivery of such bond or contract to the clerk of the court to be recorded, shall be taken and held to be notice to all subsequent purchasers of the existence of such bond or contract.

If any *feme covert* shall be a party executing such deed, and shall only be relinquishing her right of dower in such estate or interest, or when a husband and wife shall have sealed and delivered a writing purporting to be a conveyance of any estate or interest, and such *feme covert* shall appear before any two justices of the peace of any state or territory of the United States, or of the District of Columbia, and being by them examined privily and apart from her husband, and having the deed fully explained to her, shall acknowledge the same to be her act and deed, and shall declare that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it ; and such privy examination, acknowledgement, and declaration, shall be certified by such justices under their hands and seals, and the deed so acknowledged and certified, delivered to the clerk of the court to be recorded, shall be as effectual in law to pass from such *feme covert* and her heirs, her right of dower, or other right, title and interest, in real estate, which she may have had at the date of such deed, as if she had been an unmarried woman.

When any such acknowledgement shall be taken before any justices of the peace beyond the limits of the District of Columbia, there shall accompany such certificate of ac-

knowledge a certificate of the clerk or other officer having official cognizance of the fact, under his official seal, that such persons were, at the date of their said certificate, in fact, justices as they purport to be.

All deeds recorded within the District of Columbia, prior to the 20th April, 1838, whereby lands, tenements and hereditaments, situated in said District, are conveyed, on an acknowledgement before any two justices of the peace for said District, shall be good and effectual for the purpose or purposes therein mentioned, and valid as to all subsequent purchasers, and all creditors from that time, provided said deeds were in good faith, and without an intent to commit a fraud upon creditors or *bona fide* subsequent purchasers. Act of Congress, April 20th, 1838, 5 Stat. at Lar. 226—8.

If any person seized and possessed as aforesaid, shall be in some foreign country, and shall execute and acknowledge any such deed before any judge or chancellor of any court, master or master extraordinary in chancery, or notary public in such foreign country; and such execution and acknowledgement, and also the identity of the grantor or grantors shall be certified upon, or annexed to such deed, under the hand and seal of any such judge, chancellor, master or master extraordinary, or notary public; and such deed, so executed, acknowledged and certified in the several and respective modes aforesaid, shall be recorded amongst the land records of the county of Washington, within twelve calendar months from the day of its date, such deed shall be good and effectual for the purpose or purposes therein mentioned. Act of Congress, May 31st, 1832, 4 Stat. at Lar. 520—1.

It is not necessary to the validity of a deed of real estate, as against the party grantor and his heirs, and all other persons having notice thereof, that it should ever be recorded; and all subsequent purchasers and mortgagees, will be bound by a prior deed of which they had notice, whether such prior deed be recorded or not.

By act of Maryland, of 1829, ch. 8, and act of Maryland 1763, ch. 13, (which are of force in this District,) it is enacted that no goods or chattels, slave or slaves, whereof the vendor, mortgagor or donor, shall remain in possession, shall pass, alter or change, or any property thereof be transferred (except as against such seller, mortgagor or donor, his executors, administrators or assigns, or any claiming under him, her or them) to any purchaser, mortgagee or donee, unless the same be by writing, and acknowledged before one justice of the peace of the District of Columbia, and recorded

in the land records of said District within twenty days. Where personal property accompanies the deed, recording is not necessary, nor is acknowledgement before a magistrate.

Attorney and Client.

The principal duties of an attorney, are, to be true to the court and to his client, to manage the business of his client with care, skill and integrity. 4 Burr. 2061; 1 B. & A. 202; 2 Wills. 325; 1 Bing. R. 347. To keep his client informed as to the state of his business, and to keep his secrets confided to him as such. Fidelity to his client is one of the first requisites in the character of an honorable practitioner at the bar. That fidelity requires that he should maintain all the just rights of his client, but it extends no further. It will not justify any attempt to evade the fair operation of the law, or to impede the administration of justice.

A fault on either side of the true line of honorable professional conduct will equally meet the decided reprehension of the court.

More particularly, an attorney is held liable for the consequences of ignorance or non-observance of the rules of practice of the court; for the want of proper care in the preparation of a cause for trial, or of attendance thereon, and the use of due means for procuring the attendance of the witnesses. But he is not answerable for error of judgment upon points of new occurrence, or of nice and doubtful construction. 6 Bing. 467; 16 S. & R. 368. If he undertakes the collection of a debt, he is bound to sue out all process necessary to that object; to deliver an execution to the officer in proper season after judgment, to perfect and preserve the lien created on property. 15 Mass. 82, 316; 1 Verm. 73; 11 Mass. 246; 4 Burr. 2060; 2 Wills. 325. If he doubts the expediency of farther proceedings, he should give notice to his client, and request specific instructions; without which, it seems, he would be justified in not prosecuting in cases where he is influenced by a prudent regard to the interests of his client. 2 Chipm. 117. An attorney is not compellable to appear for any one, unless he take his fee, undertake or promise to appear, after which, the court will compel him to appear. Impey's prac. K. B. 189; cites R. M. 1654; 1 Salk. 86—7; Comb. 2.

If an attorney appears, and judgment is entered against his client, the court will not set aside the judgment, though the attorney had no warrant or authority to appear, if the

attorney be responsible; but if the attorney be not responsible or suspicious, the judgment will be set aside. 1 Lill. Abr. 140. 1 Salk. 88.

Communications professedly made by a client to his counsel, attorney or solicitor, are considered confidential, and the latter is not permitted to divulge them, for this is the privilege of the client and not the attorney. Nor does the protection given by the law to such communications cease with the termination of the suit, or other litigation or business in which they were made; nor is it affected by the party's ceasing to employ the attorney, and retaining another; nor by any other change of relations between them; nor by the death of the client. The seal of the law once fixed upon them *remains forever; unless removed by the party himself*, in whose favor it was there placed.

It is not removed without the client's consent, even though the interests of criminal justice may seem to require the production of the evidence. 3 Wend. R. 339; 4 T. R. 336—9; 12 Moore, 520; Moore R. & M. 390; Rex vs. Smith, Phil. & Am. on Ev. 182; 3 Burr. 1637; 8 Mass. 370; 8 C. & P. 596; 5 Man. & Grang. 271.

But the privilege or protection extends only to cases where the party applies for professional assistance, and not to extraneous or impertinent communications, nor to information imparted to a counsellor in the character as a friend, and not as counsel; 6 Wend. R. 47; 14 Pick. R. 416; 1 Gaines R. 157. Counsel have been holden not to be privileged in the following cases, to wit: when the communication was made before the attorney was employed, as such, 1 Vent. 197; 2 Atk. 524; after the attorney's employment has ceased, 4 T. R. 431; when the attorney was consulted because he was an attorney, yet refused to act as such, and was therefore only applied to as a friend, 4 T. R. 753; where a fact merely took place in the presence of the attorney, Cowp. 846; 2 Ves. 189; 2 Curt. Eccl. R. 866; but see St. 1122; when the matter communicated was not in its nature private, and could in no sense be termed the subject of a confidential communication, 7 East. R. 357; 2 B. & B. 176; 3 Johns. Cas. 198; when the things disclosed had no reference to professional employment, though disclosed while the relation of attorney and client subsisted, Peake's R. 77; when the attorney made himself a subscribing witness, 10 Mod. 40; 3 Burr. 1637; when he was directed to plead the facts to which he is called to testify. 7 N. S. 179; Stark. Ev. h. t; 1 Peters' R. 356; 13

John. R. 492; 11 Whea. 280; Whart. Dig. 275; 4 Wash. C. C. R. 718; 2 ch. pr. 18—21.

The rule is also limited to cases where the witness, or the defendant in a bill in chancery treated as such, and so called to discover, learned the matter in question only as counsel, solicitor, or attorney, and in no other way. If, therefore, he were a party to the transaction, and especially if he were a party to a fraud, (as, for example, if he turned informer, after being engaged in a conspiracy,) or, in other words, if he were acting for himself, though he might also be employed for another, he would not be protected from disclosing. Story on Eq. Pl. sec. 601, 602. Duffin vs. Smith, Peake's Cas. 108; 3 My. & Graig, 515, 521; 1 Greenl. on Ev. 242.

An action lies against an attorney for suffering a judgment against his client by *nil dicit*, when he had instructed him to plead the general issue. If an attorney makes default in a plea of land or other property, by which the party loses his land or other property, he may have an action against the attorney and recover all in damages. 1 Danv. 185. If an attorney take reward on the other side, or cause an attorney to appear and confess the action, &c., or if he play into the hands of his client's adversary, or adversary's counsel, or attorney, or be guilty of ill practice, attended with fraud and corruption, and committed against the obvious rules of justice and common honesty; or of base and unfair dealing towards his client, in the way of business, as for protracting his suit by little shifts and devices, and putting the party to unnecessary expense in order to raise his bill; or demanding fees for business that was not done; or for refusing to deliver up his client's writings with which he has been entrusted in the way of business; or money which has been recovered and received by him to his client's use; and for every other violation of his duties—the party injured may have an action at law against the attorney, and the latter may also be punished by fine at the discretion of the court, attachment, or suspending him perpetually or for a time. Act of Maryland 1719, ch. 4. 2 Greenl. on Ev. sec. 145, 146; 12 Mod. 251; 4 Mod. 367; 2 Hawk. P. C. 144; 8 Mod. 306; Hob. 9. Tom. Law Dic. Title attorney.

Payment to the attorney is payment to the principal. Doug. 623; 1 Black R. 8.

If an attorney, having received money for his client, mixes it with his own, in a general deposit with a banker in his own name, and the banker fails, the attorney is liable for

the loss. But if, in the exercise of that discretion which a man of ordinary prudence and caution would have exercised with his own, he deposited it in his client's name, or otherwise designated it as money held by him in trust for his client, so ear-marked as to be capable of precise identification, he will not be responsible. 2 C. & P. 59. 2 Greenl. on Ev. sec. 148. The attorney's rights are, to be justly compensated for his services. 1 Keen's R. 668.

The duties of the client towards his counsel are, first, to give him a written authority, though a verbal one will sometimes suffice, 1 ch. Pr. 19; second, to disclose his case with perfect candor; third, to offer, spontaneously, advances of money to his attorney; fourth, he should at the end of the suit promptly pay his attorney his fees. 2 ch. Pr. 27.

An attorney has a lien on the papers of his client and also the money recovered by his client for his bill of costs; if the money come to his hands, he may retain to the amount of his bill. He may stop it *in transitu*, if he can lay hold of it; if he apply to the court, they will prevent its being paid over until his demand is satisfied. If the attorney give notice to the defendant not to pay till his bill be discharged, a payment by the defendant after such notice, would be in his own wrong, and like paying a debt which has been assigned after notice.

An attorney has a lien upon a sum awarded in favor of his client as well as if recovered by judgment; and if, after notice to the defendant, the latter pay it over to his plaintiff, the plaintiff's attorney may compel a repayment of it to himself; and he shall not be prejudiced by a collusive release from the plaintiff to the defendant. 1 East, 464; 6 T. R. 361; 4 T. R. 123; Dougl. 226—238; 15 Ves. Jun'r. 72; 12 Mod. 657. The plaintiff or defendant may not change his attorney while the suit is depending, without leave of the court, which would reflect on the credit of attorneys; nor until his fees are paid. Mic. 14 Cas; Tom. Law Dic. Title attorney.

POSTSCRIPT.

Since the above was in type, two persons have been appointed by the President of the United States, under Act of Congress, approved March 1855, "to revise, simplify, digest and codify the laws of the District of Columbia, and also the rules and principles of practice, of pleadings, of evidence, and conveyancing," the preparation of said code to be made

under the superintendence and revision of the Attorney General of the United States, and eight competent persons, five of whom to be appointed by the Board of Aldermen and Common Council of the city of Washington; two by the Board of Aldermen and Council of Georgetown; and one by the Levy Court of the county of Washington; said code to be submitted to the consideration of the people of said District, and to Congress on or by the first Monday in December 1857.

Court of Claims against the United States.

A Court has been established in Washington city, D. C., by act of Congress, approved, February 24, 1855, called a Court of Claims, consisting of three judges, appointed by the President, by and with the advice and consent of the Senate, to "hear and determine all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States, which may be suggested to it by petition filed therein; and also all claims which may be referred to said court by either house of Congress."

"It shall be the duty of the claimant in all cases to set forth a full statement of the claim, and of the action thereon in Congress, or by any of the departments, if such action has been had, specifying also what person or persons are owners thereof or interested therein, and when and upon what consideration such person or persons became so interested."

A Solicitor for the United States, to represent the government before said court, is appointed by the President, by and with the advice and consent of the Senate, and, "It shall be the duty of said Solicitor to prepare all cases on the part of the government for hearing before said court, and to argue the same when prepared; to cause testimony to be taken, when necessary to secure the interest of the United States," &c.

The said court has authority "to appoint commissioners to take testimony to be used in the investigation of claims that may come before it; to prescribe the fees they shall receive for their services; and to issue commissions for the taking of such testimony; whether the same shall be taken at the instance of the claimant or of the United States, and also to issue subpoenas to require the attendance of witnesses in or

der to be examined before such commissioners; and compliance therewith shall be compelled," &c.

"When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and cost of the commission and notice, shall be paid by such claimant; and when taken at the instance of the government, such fees together with all postage incurred by the Solicitor," &c., shall be paid by the government.

"In taking testimony to be used in support of any claim before said court, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States."

"Said court shall keep a record of their proceedings, and shall, at the commencement of each session of Congress, and at the commencement of each month during the session of Congress, report to Congress the cases upon which they shall have finally acted, stating in each the material facts which they find established by the evidence, with their opinion in the case, and the reasons upon which such opinion is founded: and such report, together with the briefs of the Solicitor and of the claimant, which shall accompany the report, upon being made to either house of Congress, shall be printed in the same manner as other public documents. And said court shall prepare a bill or bills in those cases which shall have received the favorable decision thereof, in such form as, if enacted, will carry the same into effect."

THE END. .

COMMENDATIONS OF THE FOREGOING WORK.

The undersigned is under obligations to Col. Thompson, of the Washington bar, for the foregoing abstract of the collection, and other laws of the District of Columbia, and of its correctness, the known legal abilities of Col. T. will be a sufficient guaranty.

To high legal abilities, Col. Thompson unites the character of a prompt, energetic, business man, &c.

J. D. BROWN,

*Author of "Brown's Collection Laws,"
Philadelphia, Pa.*

We are indebted to the compiler of this very useful and acceptable "Abstract," for a copy of it which is now before us, and which we have no hesitation in pronouncing to be deserving of wide circulation and of general acceptation,—emanating as it does from an intelligent member of the Washington bar—a gentleman, who, we are assured, has "very carefully prepared" his Abstract, and has "given the highest authorities known to the law in support of every proposition of law enunciated" in his manual. While this "Abstract" will commend itself to magistrates and all others whose avocations are connected with the administration of justice, it will be found convenient and useful for every citizen, who desires to become acquainted with the laws of this District. To Col. M. Thompson we tender our thanks for a copy of the Abstract.—*Washington News*.

A valuable "Abstract of the Laws of the District of Columbia" is now in process of publication by counsellor M. Thompson, and promises to be a useful compendium to every person having business relations in Washington.—*Baltimore Sun*.

We have received from the author a copy of his "Abstract of the Laws of the District of Columbia," prepared by M. Thompson, Esq., counsellor at law of this city. This Abstract appears to us to be a lucid and clear view of the various subject-matters cognizable by the laws, and of the appropriate remedies, and other points appertaining to the same. It is emphatically "*multum in parvo*," and reflects credit upon its logical and erudite author.—*American Organ*.

We have also on our table, from the author, M. Thompson, Esq., of the Washington bar, "An Abstract of the Laws of the District of Columbia," a work eminently useful to magistrates and others engaged in the administration of justice. The highest authorities known to the law are adduced in support of every legal proposition enunciated, thus rendering the compilation equally useful to the lawyer and the layman.—*National Intelligencer*.

This is an excellent and valuable publication prepared by Mr. Thompson, a member of the Washington bar, and supplies a want long felt by the profession here. It will be useful, moreover, to the profession all over the country, considering the important position which is held by the federal city. The author has given the highest authorities in support of every proposition enunciated.—*De Bow's Review*.

VALUABLE PAMPHLET.—M. Thompson, Esq., Attorney at Law, Four-and-a-half street, Washington, has just issued a revised and enlarged edition of a pamphlet of interest to every member of the community. It contains "An Abstract of the Laws of the District of Columbia."—*Washington Globe*.

ABSTRACT OF LAWS.—Colonel M. Thompson has rendered an essential service to the community by the preparation of an Abstract of the Laws of the District of Columbia. His former pamphlet has been considerably enlarged; and now we have, in a comparatively small compass, various matters of interest to all classes of our citizens. First, there are observations on the judicial organization of the District, and then notes of the laws of imprisonment for debt, false pretences, commencement of suit, judgment, execution, supersedeas, justices of the peace, their jurisdiction, powers, &c.; attachment, landlord and tenant, interest and usury, together with all matters which enter into judicial proceedings in this District. The Colonel has bestowed much labor on the work. Small as its dimensions are, it is highly appreciated for its valuable contents.—*Washington Sentinel*.

We are indebted to the author, Col. M. Thompson, of the Washington bar, for a copy of his valuable "Abstract of the Laws of the District of Columbia."

The well known legal abilities of Col. T. afford a sufficient guaranty for the correctness of the work.—*Virginia Sentinel*.

A DESIDERATUM.—Col. M. Thompson, of the Washington bar, has for some time been preparing, and has just published, a work presenting an Abstract of the Judiciary System and of the Laws in force in the District of Columbia.

Legal gentlemen testify to the accuracy of the publication, and the work may justly be esteemed as a legal desideratum.—*Washington Union*.

Quite a useful pamphlet has been prepared and published by Col. M. Thompson, a talented member of the Washington bar, giving an Abstract of the Laws of the District of Columbia.

Its correctness is vouched for by those acquainted with the laws of the District, independent of the guaranty in the known legal abilities of Col. Thompson.—*Washington Star*.

COURT OF CLAIMS.

In addition to the practice of law, as heretofore, in all the Courts of the District, and in the Supreme Court of the United States, the undersigned will devote himself assiduously to the prosecution of **CLAIMS AGAINST THE GOVERNMENT**, in the above Court. When the claim is established in this court, and an appropriation made by Congress for the purpose, the claimant will be paid at the Treasury of the United States.

Many of every class of claims which have been for years unsuccessfully prosecuted before the Departments and before Congress, may be established in the above court.

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WASHINGTON, CITY, D. C.

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Washington City, 1855.



